

Bennett Industries, Inc. and General Drivers, Warehousemen and Helpers Local Union No. 142, a/w International Brotherhood of Teamsters, AFL-CIO, Petitioner. Case 25-RC-9356

June 3, 1994

ORDER DENYING REVIEW

BY CHAIRMAN GOULD AND MEMBERS STEPHENS,
DEVANEY, BROWNING, AND COHEN

The National Labor Relations Board has considered the Employer's request for review of the Regional Director's Decision and Direction of Election (pertinent portions of which are attached). The request for review is denied as it raises no substantial issues warranting review.

For the reasons stated by the Regional Director, we agree with her determination that the hearing officer properly refused to allow the Employer to introduce evidence regarding the supervisory status of leadpersons and quality control inspectors because the Employer refused to take position on their status and their inclusion or exclusion from the unit. The Board's duty to ensure due process for the parties in the conduct of the Board proceedings requires that the Board provide parties with the opportunity to present evidence and advance arguments concerning relevant issues. However, the Board also has an affirmative duty to protect the integrity of the Board's processes against unwarranted burdening of the record and unnecessary delay. Thus, while the hearing is to ensure that the record contains as full a statement of the pertinent facts as may be necessary for determination of the case (NLRB Statement of Procedure Sec. 101.20(c)), hearings are intended to afford parties "full opportunity to present their respective *positions* and to produce the significant facts in support of their contentions" (emphasis added). A party's refusal to take a position at a hearing while attempting to introduce evidence may in some circumstances signify a lack of good faith. Therefore, the Board finds that, in order to effectuate the purposes of the Act through expeditiously providing for a representation election, the Board should seek to narrow the issues and limit its investigation to areas in dispute.¹

Here, the Employer refused to take a position on the supervisory issue both at the hearing and in its posthearing brief, while the Petitioner took the position that the leadpersons and inspectors are not supervisors. Thus not only was there no dispute regarding these employees' supervisory status, there was also no con-

tention by any party that these employees were in fact supervisors. Since, as stated by the Regional Director, the burden of proving that an individual is a statutory supervisor rests on the party alleging that the supervisory status exists, and here no party alleges supervisory status, there is no basis for making a determination that the individuals in question are supervisors and no need to obtain record evidence on this issue. We note, too, that the Employer on review still does not take a position on the merits, even though, having created the leadperson and inspector classifications, the Employer obviously knows the duties and authority of individuals in these classifications, and whether it views these positions as supervisory.

Finally, in denying review, we do not agree with the Regional Director's statement that if the Employer decides prior to the election to take the position that these employees are statutory supervisors, its observer(s) could challenge their ballots during the election. As correctly stated by the Regional Director, a party seeking to exclude an individual from a proposed bargaining unit on the basis that the individual is a statutory supervisor has the burden of proving that supervisory status. See, e.g., *Quadrex Environmental Co.*, 308 NLRB 101, 102 (1992). In the instant case, the petitioned-for unit specifically included leadpersons and quality control employees. The Employer refused to take a position as to these individuals' supervisory status when the issue was raised, and, in the absence of any disagreement as to their status, the Regional Director included them in the unit—and thus necessarily found that they are employees as defined in Section 2(3) of the Act. In its request for review, the Employer does not take a position on the merits of whether the disputed individuals were properly found to be employees, and thus the Regional Director's findings as to this issue stand un rebutted and uncontested. Accordingly, absent changed circumstances, no party may relitigate this issue through the challenge procedure. Compare *Inland Steel Co.*, 308 NLRB 868 fn. 2 (1992). The proper place for this issue to be litigated is at the hearing; to permit a party to take no position at the hearing when the subject is raised, leading to an uncontested nonsupervisory finding by the Regional Director, and then to permit the same party to litigate—or, in effect, relitigate—the same question in a challenged ballot proceeding would be an unwise administrative practice because it would amount to condoning duplicative procedures, unjustified delays, and unnecessary expenses for all parties, including the Board.

APPENDIX

Inspectors and Leadpersons

The Petitioner seeks a production and maintenance unit including shipping and receiving employees, inspection and

¹ Member Cohen confines his decision to the facts of this case. In this regard, he notes that the case involves the issue of supervisory status. The burden of proving such status rests on the party asserting same. Accordingly, a party's unwillingness to assume that burden means that the presumption of employee status is un rebutted.

quality control employees, and leadpersons. The Employer raised issues regarding the potential supervisory status of its 12 leadpersons and its 12 quality control inspectors, and whether its quality control employees shared a community of interest with employees undisputedly included in the petitioned-for unit. Although the Employer refused to take positions on these issues, it sought to introduce evidence regarding them.

The community of interest issue was introduced and the parties provided their evidence regarding it. Although it is not clear that the Employer was including the 12 leadpersons with the 12 inspectors in its reference to quality control employees, the record indicates that the leadpersons do have quality control duties.

The record shows that the inspectors construct boxes; make up pallets; and label pallets and boxes and place them on the production line for other employees to load with the product. In addition, inspectors advise employees of under-filled boxes and parts which have grease on them. This information is also passed on to the leadpersons who initiate a process to take action to correct the problems. Inspectors' other duties include substituting for production employees who are away from their machines due to break, illness, or vacations. Further, inspectors spend between 40 and 50 percent of their time on the production line and report to the same crew supervisors as the production employees.

The 12 leadpersons, working at the various processes along the production line, also perform a quality control function. They periodically remove parts from the line and, unlike the inspectors who are limited to visual inspection, the leadpersons take specific measurements of the product. The amount of the leadpersons' time devoted to this quality control function, as distinguished from other production tasks, is not set forth in the record.

Thus, in performing their quality control duties, the inspectors and leadpersons perform a function which is an extension of and integrated with the manufacturing process and work in close proximity to undisputed unit employees. Further, the inspectors and leadpersons share common supervision and benefits with the employees undisputedly included in the unit. It is therefore concluded that they share a com-

munity of interest with the unit employees. See *Bechtel, Inc.*, 225 NLRB 197 (1976).

In representational proceedings, the burden of proving that an individual is a statutory supervisor rests on the party alleging that the supervisory status exists. *Ohio Masonic Home*, 295 NLRB 390, 393 (1989); *Tucson Gas & Electric Co.*, 241 NLRB 181 (1979). The Petitioner maintains that the inspectors and leadpersons are not statutory supervisors and should be included in the production and maintenance unit it seeks to represent. At the hearing and in its brief, the Employer has declined to take a position regarding the supervisory status of the inspectors and leadpersons, but insisted on presenting evidence regarding the issue and objected to the hearing officer's exclusion of that evidence. Further, the Employer maintains that, aside from the question of these employees' voting eligibility, the Agency is obligated through this proceeding to rule on their supervisory status because "the Company is entitled to know if the persons can bind the Company and the restrictions, if any, as to its dealings with those individuals during the organizing campaign." Contrary to the Employer's contention, it is not a purpose of this proceeding to litigate issues not directly pertinent to the appropriateness of conducting an election, the scope of the unit, and the voting eligibility of voters regarding which the parties take opposing positions. The Employer is in possession of the evidence it wishes to present into evidence and, thus, is not hampered in its ability to take a position by the exclusion of this evidence from the record. Accordingly, in view of my finding that the inspectors and leadpersons share a community of interest with the employees undisputedly included in the unit, and inasmuch as neither party takes the position that they are ineligible to vote based on the contention that they are statutory supervisors, I shall include them in the unit.²

² Should the Employer decide prior to the election to take the position that these employees are statutory supervisors, of course, it may instruct its observer(s) to challenge their ballots during the election. If so challenged, their ballots will be treated in accordance with the Agency's standard challenged ballot procedures.